

CHAPTER 4-10.4 BARLEY

4-10.4-01. Definitions. Whenever used in this chapter:

1. "Barley" means any and all varieties of barley harvested within the state.
2. "Commissioner" means the agriculture commissioner or the commissioner's designated representative.
3. "Council" means the North Dakota barley council.
4. "First purchaser" means any person, public or private corporation, limited liability company, or partnership buying, accepting for shipment or otherwise acquiring barley from a grower, and includes a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the grower, where the actual or constructive possession of such barley is taken as part payment or in satisfaction of the mortgage, pledge, lien, or claim.
5. "Grower" means any person who plants, raises, or harvests barley, and includes both the owner and tenant jointly, a person, partnership, association, corporation, limited liability company, cooperative, trust, sharecropper, and any other and all business units, devices, and arrangements.
6. "Participating grower" means a grower who has not claimed on that grower's own behalf any refunds for the payment of taxes on barley production under this chapter for a particular year, or a grower who is not exempt from the payment of taxes on barley production under this chapter.
7. "Person" means any individual, partnership, corporation, limited liability company, association, grower, cooperative, or any other business unit.

4-10.4-02. Policy of state. The public policy of North Dakota is to protect and foster the health, prosperity, and general welfare of the people by protecting and stabilizing the barley industry and the economy of the areas producing barley. The council is the agency of the state for these purposes. This chapter may not be construed to abrogate or limit in any way the rights, powers, duties, and functions of the commissioner or any other agency of the state, nor may this chapter be construed to authorize the council to engage in competitive business enterprises.

4-10.4-03. Council - Membership - Election - Term. The council is composed of one participating grower elected from each of the districts established in section 4-10.4-04. The chairman of the council must be an elected member of the council elected by a majority vote of the council. The commissioner is an ex officio member of the council and does not have a vote. Every elected council member must be a citizen of the state and a bona fide resident of and participating grower in the district the member represents. The term of each elected member is three years and begins on April first of the year of election, except that initially two members must be elected for a three-year term; two members must be elected for a two-year term; and one member must be elected for a one-year term as designated by the commissioner. Notwithstanding the terms provided for members elected before August 1, 1997, the board, before December 31, 1997, shall determine by lot the order of subsequent elections for its members so that two members are elected for a four-year term during 1998, and one member is elected for a four-year term during each of the subsequent three years. The term of each member elected after July 31, 1997, is four years and begins on April first of the year of election. If at any time during a member's term a member ceases to possess any of the qualifications provided for in this chapter, the member's office is vacant and the remaining members of the council shall appoint another qualified participating grower for the remainder of the term of the office vacated. The commissioner, or a county agent designated by the commissioner, in cooperation with the cooperative extension service, shall conduct all elections under this section

in each district in the manner the commissioner deems fair and reasonable. All such elections must be completed prior to expiration of the members' terms. No member serving on the council before August 1, 1997, is eligible to serve more than two consecutive four-year terms. No member elected to the council after July 31, 1997, is eligible to serve more than three consecutive four-year terms.

4-10.4-04. Barley districts - Establishment. The following barley districts are established for the purpose of dividing the state into districts containing as nearly equal barley production as practicable:

1. State barley council district number one consists of the counties of Benson, Cavalier, Pembina, Walsh, Towner, and Ramsey.
2. State barley council district number two consists of the counties of Grand Forks, McLean, Nelson, Traill, Sheridan, Steele, Wells, Eddy, Foster, and Griggs.
3. State barley council district number three consists of the counties of Cass, Barnes, Burleigh, Emmons, Kidder, Logan, McIntosh, Richland, Ransom, LaMoure, Dickey, Sargent, and Stutsman.
4. State barley council district number four consists of the counties of Bottineau, Rolette, McHenry, Pierce, and Renville.
5. State barley council district number five consists of the counties of Burke, Divide, Williams, Mountrail, Ward, McKenzie, Dunn, Mercer, Oliver, Sioux, Grant, Morton, Stark, Billings, Golden Valley, Slope, Hettinger, Adams, and Bowman.

4-10.4-05. Meetings - Quorum - Compensation and expenses of council. A quorum is necessary for the transaction of all business in carrying out the duties of the council. The chairman shall call all meetings of the council except special meetings which the chairman shall call on the petition of two council members within seven days of receiving such a petition. The council shall determine the amount of compensation payable to each voting member of the council. The amount payable may not exceed seventy-five dollars per day plus reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the council. The compensation provided in this section may not be paid to any member of the council who receives salary or other compensation as a regular employee of the state.

4-10.4-06. Expenditure of funds. The council or its designated agent shall authorize all expenditures of funds made pursuant to this chapter which must be submitted upon itemized vouchers to the office of the budget for approval to be paid by warrant-check issued by the office of management and budget.

4-10.4-07. Council powers and duties. In the administration of this chapter, the council may:

1. Contract and cooperate with any person or with any governmental department or agency for research, education, publicity, promotion, and transportation for the purposes of this chapter.
2. Expend the funds collected pursuant to this chapter for its administration.
3. Appoint, employ, bond, discharge, fix compensation for, and prescribe the duties of such administrative, clerical, technical, and other personnel as it may deem necessary.
4. Accept donations of funds, property, services, or other assistance from public or private sources for the purpose of furthering the objectives of the council.

5. Investigate and prosecute in the name of the state any action or suit to enforce the collection or ensure payment of taxes authorized by this chapter, and to sue and be sued in the name of the council.
6. Formulate the general policies and programs of the state respecting the discovery, promotion, and development of markets and industries for the utilization of barley grown within the state.

4-10.4-08. Tax levied.

1. A tax at the rate of ten mills per bushel [35.24 liters] must be levied and imposed upon all barley grown in the state, delivered into the state, or sold to a first purchaser in the state. This tax is due upon any identifiable lot or quantity of barley.
2. Every first purchaser of barley shall collect the tax imposed by this section by charging and collecting from the seller the tax at the rate of ten mills per bushel [35.24 liters] by deducting the tax from the purchase price of all barley subject to the tax and purchased by the first purchaser.
3. Every first purchaser shall keep as a part of its permanent records a record of all purchases, sales, and shipments of barley, which may be examined by the council at all reasonable times. Every first purchaser shall report to the council by the thirtieth day of each calendar quarter stating the quantity of barley received, sold, or shipped by it. The remittance of the tax as provided in this section must accompany the report. All moneys levied and collected under this chapter must be paid to the council for deposit in the state treasury to the credit of an account or accounts designated "barley fund" to be used exclusively to carry out the intent and purposes of this chapter. Regular audits of the council's accounts must be conducted in accordance with chapter 54-10 and submitted to the commissioner.
4. The tax provided for by this section must be deducted as provided by this chapter whether the barley is stored or sold in this or any other state, but if agreements have not been made with dealers and first purchasers outside of the state for collecting the tax, the grower shall remit the tax to the council on all barley sold by the grower outside the state.

4-10.4-09. Nonparticipating growers - Refunds.

1. Any grower who sells barley to a first purchaser in this state and who is subject to the tax provided in this chapter and who objects to the collection of the tax, within sixty days following the collection, may make application by personal letter to the council for a refund application blank. Upon return of this blank, properly executed by the applicant and accompanied by a true copy of the invoice or invoices delivered by the purchaser to the grower, the council shall refund to the grower the net amount of the tax collected. If no request for refund is made within sixty days after the collection of the tax, the grower is conclusively presumed to have agreed to the deduction. However, a grower, for any reason, having paid the tax more than once on the same barley, upon furnishing proof of this to the council, is entitled to a refund of the overpayment.
2. The council shall develop and disseminate information and instructions relating to the purpose of the barley tax and the manner in which refunds may be claimed and shall cooperate with state and federal governmental agencies and private businesses engaged in the purchase of barley.

4-10.4-10. Referendum by growers. Whenever fifteen percent of the participating growers, with not more than fifty percent of the signatory parties from any one district, as disclosed by the records of the council for the preceding year petition the council, the council shall conduct a referendum among the participating growers of the state to determine whether

they wish the legislative assembly to raise or lower the tax imposed by section 4-10.4-08. The referendum must be conducted only among participating growers who have paid all taxes assessed pursuant to this chapter for the preceding year and the council shall prepare the ballot and mail it to each participating grower at least thirty days prior to the last date for filing ballots. In addition, each ballot must be accompanied by a notice to each participating grower:

1. Of the date of the filing of the petition by the growers for the referendum and the number of signatories.
2. Of the date and place where the council will open and tabulate the ballots which dates must be not less than five days after the last date for filing the ballots.
3. Of the last date upon which ballots may be filed with the council, or postmarked if delivered to the council by mail.
4. That any participating grower may attend the meeting of the council at the time the ballots are opened and the votes tabulated.

4-10.4-11. Collection of unpaid taxes. If a first purchaser fails to pay the tax provided in this chapter, the council may enforce collection in any appropriate court.

4-10.4-12. Penalty for nonpayment of tax. Any first purchaser who fails to pay any tax levied by this chapter on the date the tax becomes due is delinquent. The council may levy a penalty on the delinquent payments of ten percent of the tax due, plus interest at the rate of six percent per annum from the due date. The council shall collect any penalty and interest in the manner prescribed by section 4-10.4-11.

4-10.4-13. Records of council - Inspection. All of the records of the council, including acreage reports, tax returns, claims of exemption, and any other data, records, or information retained by the council are public information and are available for the inspection of any person for any lawful purpose. However, the council may make rules concerning the inspection of the information or data, and the time or place of inspection or the manner in which the information is available for inspection. The council shall keep all records at least three years.

4-10.4-14. Penalty. Any person who willfully violates this chapter is guilty of a class B misdemeanor.